IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:
SHAIKH GHALEB MOHAMMAD YASSIN ALHAMAD

Serial No.:
10/758,714

Atty. Docket No.:
4429-CIC2

Filed:
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For:
CONSTRUCTION MATERIAL CONTAINING EXPANDED FLEXIBLE MATERIAL

Examiner:
WILLIAM P. WATKINS III

Art Unit 1772

BRIEF FOR APPELLANT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Mail Stop APPEAL BRIEF-PATENTS

SIR:

Please consider the contents of the following Brief for Appellant.

I. REAL PARTY IN INTEREST

All of the right, title and interest in and to the above-described Patent Application are owned by Appellant SHAIKH GHALEB MOHAMMAD YASSIN ALHAMAD, who is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

1. Claims 1-12 are canceled. Claims 17-30 and 36-68 are withdrawn from consideration. Claims 13-16 and 31-35 are original. No amendments have been made to claims 13-16 and 31-35. Claims 13-16 and 31-35 are pending

in this case, and are the claims subject to this appeal.

2. A copy of claims 13-16 and 31-35, the claims on appeal, is provided in Claims Appendix A.

3. Claims 13-16 and 31-35 stand rejected under 35 USC § 103(a) as being unpatentable over Stock, U.S. Patent 3,825,465, in view of Kinney, U.S. Patent 312,864.

IV. STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No response to the final rejection mailed 26 July 2006 was mailed and no amendments to the specification or claims were proposed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 13

The subject matter claimed in independent claim 13, on appeal, is a construction material including a sheet of flexible

material 10 (lines 13-15, page 12, of the specification in conjunction with FIG. 2). The sheet 10 has a longitudinal dimension and discontinuous slits 11 in spaced-apart lines parallel to each other and transverse to the longitudinal dimension of the sheet 10 (lines 22-25, page 12, of the specification in conjunction with FIG. 2). The sheet 10 is longitudinally expanded to form cells 16 in the sheet 10 (page 15 line 18, to page 16 line 6, of the specification in conjunction with FIGS. 2 and 3A-3E). A hardened mixture of sand and tar, coated with sand particles, is disposed in each of the cells 16 (lines 11-16, page 43, of the specification).

Independent Claim 31

The subject matter claimed in independent claim 31, on appeal, is a construction material including a sheet 10 of flexible material (lines 13-15, page 12, of the specification in conjunction with FIG. 2). The sheet has a thickness of about 0.028 to 1.0 mm (lines 14-16, page 13, of the specification in conjunction with FIG. 2). The sheet 10 has discontinuous slits 11 separated by gaps 12 (lines 22-27, page 12, of the specification in conjunction with FIG. 2). The slits 11 each have a length, and are disposed in parallel lines which are spaced apart about 1 to 4 mm (lines 22-25, page 12; line 18,

page 13; and lines 4-5, page 14, of the specification in conjunction with FIG. 2). The length of each of the slits is about 1 to 2.5 cm (lines 18-19, page 13, of the specification in conjunction with FIG. 2). The gaps 12 each have a length of about 2 to 6 mm (lines 19-20, page 13, of the specification in conjunction with FIG. 2). The sheet 10 is expanded to form cells 16 in the sheet 10 (page 15 line 18, to page 16 line 6, of the specification in conjunction with FIGS. 2 and 3A-3E). A hardened mixture of sand and tar is disposed in each of the cells 16 (lines 11-16, page 43, of the specification).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 13-16 and 31-35 stand rejected under 35 USC § 103(a) as being unpatentable over Stock, U.S. Patent 3,825,465, in view of Kinney, U.S. Patent 312,864. The issue to be resolved in this appeal is, therefore, whether claims 13-16 and 31-35 are patentable over Stock, U.S. Patent 3,825,465, in view of Kinney, U.S. Patent 312,864.

VII. ARGUMENT

Issue: Whether claims 13-16 and 31-35 are patentable over Stock, U.S. Patent 3,825,465, in view of Kinney, U.S. Patent 312,864.

Claims 13-16 and 31-35 stand rejected under 35 USC § 103(a) as being unpatentable over Stock, U.S. Patent 3,825,465, in view of Kinney, U.S. Patent 312,864. Appellant respectfully traverses this rejection. The claims are presented in one group by the examiner, that group of claims now on appeal being claims 13-16 and 31-35. None of the claims necessarily stands or falls together.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Further, a prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F.2d 1540, 220 USPQ

303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). "All words in a claim must be considered in judging patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494. 496 (CCPA 1970).

Independent claim 13

From the language of claim 13 it can be seen that several specific elements are included in the claimed construction material. First, a sheet of flexible material has a longitudinal dimension and discontinuous slits in spaced-apart lines parallel to each other and transverse to the longitudinal dimension. Second, the sheet is longitudinally expanded to form cells in the sheet. Third, a hardened mixture of sand and tar, coated with sand particles, is disposed in each of the cells. Each of these elements specifically describes a feature or structure of the invention, and are not simply characteristics that occur naturally or inherently.

Beginning on page 2 of paper no. 03, it is alleged that Stock teaches an expanded sheet of material which may be filled with tar products and aggregate (col. 2, lines 10-40), and that Kinney teaches the use of an expanded sheet where the slits are transverse to the longitudinal direction of the sheet an

intersect at the edge of the sheet in order to be expanded into a three-dimensional structure. On page 3 of paper no. 003, a conclusion is made that it would have been obvious to select a combination of tar and plaster from the possible coating and filler materials taught by Stock as options, and that it would have been obvious to substitute the transverse slits of Kinney for the longitudinal slits of Stock to produce a strong and still structure because of the teachings of Kinney.

Appellant contends that the rejection of claim 13 set forth in paper no. 03 does not establish a prima facie case of obviousness. It is well established that a prima facie case of obviousness requires that the reference teachings suggest the claimed subject matter and not simply the general aspects of the invention, and that when more than one reference is employed to establish the obviousness rejection the prior art teachings must be sufficient and suggest to one skilled in the art that the substitution, combination or modification can or should be made. Thus, the Federal Circuit has stated that "[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination." See In re Geiger, 815 F.2d 686, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987).

Stock teaches sheet stock that is cut and expanded to form a three-dimensional shape with a reticulated pattern of apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material before expansion (col. 1, lines 67-70). According to the teachings of Stock, the apertures align to allow receipt of reinforcement members such as tubular members therethrough. Stock teaches that a wall assembly is formed with the expanded three-dimensional structure formed from sheet stock having reinforcement members disposed perpendicular to the planar surfaces of the sheet extending through superimposed apertures of the reticulated pattern of apertures (col. 2, lines 6-10), after which the remaining apertures void of reinforcing members are filled by plastic material (col. 4, lines 30-32). According to the teachings of Stock, some of the apertures formed in the sheet stock accept reinforcing members, while those apertures void of reinforcing members are filled with plastic material.

Stock clearly teaches the importance of not filling each of the apertures with plastic material, because some of the apertures must be used to accept reinforcing members to provide the expanded three-dimensional structure formed from sheet stock with the necessary structural strength to provide the support

required of the expanded three-dimensional structure formed from sheet stock. Because Stock teaches the necessity of positioning reinforcing members through superimposed apertures of the expanded three-dimensional structure formed from sheet stock for providing the expanded three-dimensional structure formed from sheet stock with the necessary structural strength after which the apertures void of reinforcing members may then be filled with plastic material, one having ordinary skill in the art in considering the teachings of Stock would clearly not be motivated, or be provided with any motivation, to eliminate the reinforcing members from the expanded three-dimensional structure formed from sheet stock and fill all of the apertures with plastic material. To do so would not only be contrary to the teachings of Stock, but could also render the expanded three-dimensional structure formed from sheet stock want of the required structural strength to provide the desired support and, therefore, unsafe or inoperative for its intended use. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Accordingly, because the examiner's proposed modification to eliminate the reinforcing members from the expanded three-

dimensional structure formed from sheet stock in Stock and filling all of the apertures with plastic material defeats the purpose of Stock, is contrary to the teachings provided by Stock, could render the invention of stock inoperative or unsafe for its intended purpose, and assumes teachings that Stock teaches away from, the examiner's proposed modification to Stock to support the rejection of claim 13 cannot be supported.

In the present invention as claimed in claim 13, the sheet includes slits transverse to a longitudinal dimension and is expanded longitudinally to form cells. This structure inherently cannot have apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material. In other words, Stock has apertures overlying, e.g., superimposed relative to, one another to allow receipt of a tube therethrough. The present invention as claimed does not and cannot have this feature. Thus, the structure as claimed in claim 13 and the structure taught by Stock are entirely different.

Stock teaches that the three-dimensional structure is formed from the sheet "by pressing with dies that are moved perpendicular to the sheet." (col. 3, lines 40-42) In the

present invention as claimed in claim 13, the sheet is longitudinally expanded not perpendicularly expanded by dies as taught by Stock. This is a substantially different process and will result in a different structure as described previously.

Additionally, Stock teaches a plastic material used to fill the apertures. Stock also teaches that the plastic material can be various organic plastics. Stock is quite specific on the material used, and does not suggest that tar and sand be used as claimed in claim 13 of the present application. Stock does teach the use of tar as a coating. However, the use is not as filler for the apertures of the expanded three-dimensional structure formed from sheet stock, but as a stiffening coating for non-metal material. When other materials such as paper or plastics are used for the sheet material, they can be impregnated or sprayed with resins or tars. These are used to impart stiffness to the material, and not employed to fill the apertures of the expanded three-dimensional structure formed from sheet stock. Since Stock specifically teaches the use of tar as a coating, but not for filling the apertures the expanded three-dimensional structure formed from sheet stock, the use of tar for filling the apertures is clearly not recognized or suggested by Stock. To conclude that tar can be used to fill

the apertures of the expanded three-dimensional structure formed from sheet stock assumes teaches beyond the teachings provided by Stock. It can also be assumed that because does not teach or suggest that tar can or should be used in lieu of plastic to fill the apertures of the expanded three-dimensional structure formed from sheet stock, to do so may render the device in Stock unsafe or inoperative for its intended purpose. Also, Stock it completely silent as to sand as specified in claim 13.

Stock clearly differentiates between coating the expanded three-dimensional structure formed from non-metal sheet stock, and filling the apertures formed by the expanded three-dimensional structure formed from sheet stock. The substances utilized to coat the expanded three-dimensional structure formed from sheet stock include resins and tars to stiffen the expanded three-dimensional structure formed from non-metal sheet stock. The apertures formed by the expanded three-dimensional structure formed from sheet stock are filled with plastic material. There is no teaching or suggestion made in Stock that plastic material may, could, or should be used to coat the expanded three-dimensional structure formed from non-metal sheet stock for imparting stiffness thereto. Moreover, there is no teaching or suggestion made in Stock that resin or tar material may, could,

or should be used to fill the apertures formed by the expanded three-dimensional structure formed from sheet stock. One having ordinary skill in the art could not possibly find support in Stock for that teaches that tar or resin material may, could, or should be used as a substitute to plastic material as the filler material for the apertures of the expanded three-dimensional structure formed from sheet stock. To so conclude, as has the examiner, moves well beyond the teachings of Stock and reaches squarely within the teachings of appellant's specification, which is erroneous and is not permitted.

Kinney teaches metallic fencing. The entire purpose of the invention is to provide "an open framework of great strength and stiffness" (col.3, lines 30-32) for use as fencing or platforms, grating, screens etc. The key term here is "open framework". It is clear from the teaching that closing any of the openings, such as with tar and sand, would render the device inoperable for its intended purpose. Therefore, it cannot suggest the present invention as claimed in claim 13. Additionally, the structure taught by Kinney gains its strength by corrugating the sheet material. Without corrugations, the device again is rendered inoperable for its intended purpose.

The combination of Stock and Kinney is improper as there is no suggestion that the combination can or should be made. The slits transverse to the longitudinal axis as taught by Kinney cannot be employed for the device of Stock since it would, or may, prevent the formation of superimposed apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material before expansion. An expanded three-dimensional structure formed from sheet stock having superimposed apertures is required by Stock in order to receive reinforcement members therethrough. The structure of Kinney does not permit or show this structure, and therefore the substitution would render the device of Stock inoperable for its intended purpose. Since the substitution would not work, there clearly is no suggestion or motivation to make the substitution. Even assuming the combination of Stock and Kinney is proper, there is no teaching or suggestion in the art to fill each of the cells or apertures with plastic material or other material, because to do so would prevent the expanded three-dimensional structure formed from sheet stock to accept reinforcing members through the superimposed apertures.

Since each of the cited references fail to render the invention as claimed in claim 13 unpatentable individually, and

the combination thereof is improper, the present invention as claimed is not obvious in view of Stock and Kinney.

Dependent claims 14-16

As explained above, the combination of Stock and Kinney cannot possibly disclose the limitations of claim 13 and claim 13 is allowable. Claims 14-16 are dependent upon claim 13 and are, therefore, also allowable, which renders moot the rejection of claims 14-16. Accordingly, claims 14-16 are each dependent upon a claim that is allowable according to the argument set forth above and, therefore, each of them is allowable.

Independent claim 31

From the language of claim 31 it can be seen that several specific elements are included in the claimed construction material. First, a sheet of flexible material has a thickness of about 0.028 to 1.0 mm and discontinuous slits, separated by gaps and each having a length, in parallel lines which are spaced apart about 1 to 4 mm. Second, the length of each of the slits is about 1 to 2.5 cm, and the gaps each have a length of about 2 to 6 mm. The sheet is expanded to form cells in the sheet, and a hardened mixture of sand and tar is disposed in each of the cells. Each of these elements specifically

describes a feature or structure of the invention, and are not simply characteristics that occur naturally or inherently. According to the argument set forth in conjunction with claim 13, Appellant contends that the rejection of claim 31 set forth in paper no. 03 does not establish a prima facie case of obviousness.

Stock teaches sheet stock that is cut and expanded to form a three-dimensional shape with a reticulated pattern of apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material before expansion (col. 1, lines 67-70). According to the teachings of Stock, the apertures align to allow receipt of reinforcement members such as tubular members therethrough.

Stock teaches that a wall assembly is formed with an expanded three-dimensional structure formed from sheet stock having reinforcement members disposed perpendicular to the planar surfaces of the sheet extending through superimposed apertures of the reticulated pattern of apertures (col. 2, lines 6-10), after which the remaining apertures void of reinforcing members are filled by plastic material (col. 4, lines 30-32). According to the teachings of Stock, some of the apertures

formed in the sheet stock accept reinforcing members, while those apertures void of reinforcing members are filled with plastic material. Stock clearly teaches the importance of not filling each of the apertures with plastic material, because some of the apertures must be used to accept reinforcing members to provide the expanded three-dimensional structure formed from sheet stock with the necessary structural strength to provide the support required of the expanded three-dimensional structure formed from sheet stock. Because Stock teaches the necessity of positioning reinforcing members through superimposed apertures of the expanded three-dimensional structure formed from sheet stock for providing the expanded three-dimensional structure formed from sheet stock with the necessary structural strength after which the apertures void of reinforcing members may then be filled with plastic material, one having ordinary skill in the art in considering the teachings of Stock would clearly not be motivated, or be provided with any motivation, to eliminate the reinforcing members from the expanded three-dimensional structure formed from sheet stock and fill all of the apertures with plastic material. To do so would not only be contrary to the teachings of Stock, but could also render the expanded three-dimensional structure formed from sheet stock want of the required structural strength to provide the desired support and,

therefore, unsafe or inoperative for its intended use. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Accordingly, because the examiner's proposed modification to eliminate the reinforcing members from the expanded three-dimensional structure formed from sheet stock in Stock and filling all of the apertures with plastic material defeats the purpose of Stock, is contrary to the teachings provided by Stock, could render the invention of stock inoperative or unsafe for its intended purpose, and assumes teachings that Stock teaches away from, the examiner's proposed modification to Stock to support the rejection of claim 31 cannot be supported.

Stock teaches a plastic material such as plaster or concrete being used to fill the apertures. Stock also teaches that the plastic material can be various organic plastics. Stock is quite specific on the material used, and does not suggest that tar and sand be used as claimed in claim 13 of the present application. Stock does teach the use of tar as a coating. However, the use is not as filler for the apertures of the expanded three-dimensional structure formed from sheet

stock, but as a stiffening coating for non-metal material. When other materials such as paper or plastics are used for the sheet material, they can be impregnated or sprayed with resins or tars. These are used to impart stiffness to the material, and not employed to fill the apertures of the expanded three-dimensional structure formed from sheet stock. Since Stock specifically teaches the use of tar as a coating, but not for filling the apertures the expanded three-dimensional structure formed from sheet stock, the use of tar for filling the apertures is clearly not recognized or suggested by Stock. To conclude that tar can be used to fill the apertures of the expanded three-dimensional structure formed from sheet stock assumes teaches beyond the teachings provided by Stock. As mentioned above in conjunction with claim 13, It can also be assumed that because does not teach or suggest that tar can or should be used in lieu of plastic to fill the apertures of the expanded three-dimensional structure formed from sheet stock, to do so may render the device in Stock unsafe or inoperative for its intended purpose. Also, Stock it completely silent as to sand as specified in claim 31.

In Appellant's claim 31, the sheet of flexible material has a thickness of about 0.028 to 1.0 mm, which is exceptionally

thin and, therefore, inherently flimsy lacking stiffness. Stock specifically teaches that the sheet stock must have sufficient stiffness to retain its shape after expansion, and that if paper or cardboard is used that it be impregnated or coated with various resins or tars to provide the required stiffness. (col. 2, lines 27-40). Because the sheet material specified in Appellant's claim 31 is exceptionally thin and therefore inherently flimsy lacking stiffness, one have ordinary skill in the art would not be motivated to look to Stock because the starting material in Stock is completely different in character than the starting material as specified in claim 31.

As mentioned above in conjunction with claim 13 and which is again emphasized in conjunction with claim 31, Stock clearly differentiates between coating the expanded three-dimensional structure formed from non-metal sheet stock, and filling the apertures formed by the expanded three-dimensional structure formed from sheet stock. The substances utilized to coat the expanded three-dimensional structure formed from sheet stock include resins and tars to stiffen the expanded three-dimensional structure formed from non-metal sheet stock. The apertures formed by the expanded three-dimensional structure formed from sheet stock are filled with plastic material. There

is no teaching or suggestion made in Stock that plastic material may, could, or should be used to coat the expanded three-dimensional structure formed from non-metal sheet stock for imparting stiffness thereto. Moreover, there is no teaching or suggestion made in Stock that resin or tar material may, could, or should be used to fill the apertures formed by the expanded three-dimensional structure formed from sheet stock. One having ordinary skill in the art could not possibly find support in Stock for that teaches that tar or resin material may, could, or should be used as a substitute to plastic material as the filler material for the apertures of the expanded three-dimensional structure formed from sheet stock. To so conclude, as has the examiner, moves well beyond the teachings of Stock and reaches squarely within the teachings of appellant's specification, which is erroneous and is not permitted.

Kinney teaches metallic fencing. The entire purpose of the invention is to provide "an open framework of great strength and stiffness" (col.3, lines 30-32) for use as fencing or platforms, grating, screens etc. The key term here is "open framework". It is clear from the teaching that closing any of the openings, such as with tar and sand, would render the device inoperable for its intended purpose. Therefore, it cannot suggest the

present invention as claimed in claim 13. Additionally, the structure taught by Kinney gains its strength by corrugating the sheet material. Without corrugations, the device again is rendered inoperable for its intended purpose.

The combination of Stock and Kinney is improper as there is no suggestion that the combination can or should be made. The slits transverse to the longitudinal axis as taught by Kinney cannot be employed for the device of Stock since it would, or may, prevent the formation of superimposed apertures in a plurality of generally planar surfaces transverse to the plane of the sheet material before expansion. An expanded three-dimensional structure formed from sheet stock having superimposed apertures is required by Stock in order to receive reinforcement members therethrough. The structure of Kinney does not permit or show this structure, and therefore the substitution would render the device of Stock inoperable for its intended purpose. Since the substitution would not work, there clearly is no suggestion or motivation to make the substitution. Even assuming the combination of Stock and Kinney is proper, there is no teaching or suggestion in the art to fill each of the cells or apertures with plastic material or other material, because to do so would prevent the expanded three-dimensional

structure formed from sheet stock to accept reinforcing members through the superimposed apertures.

Since each of the cited references fail to render the invention as claimed in claim 31 unpatentable individually, and the combination thereof is improper, the present invention as claimed is not obvious in view of Stock and Kinney.

Dependent claims 32-35

As explained above, the combination of Stock and Kinney cannot possibly disclose the limitations of claim 31 and claim 31 is allowable. Claims 32-35 are dependent upon claim 31 and are, therefore, also allowable, which renders moot the rejection of claims 32-35. Accordingly, claims 32-35 are each dependent upon a claim that is allowable according to the argument set forth above and, therefore, each of them is allowable.

VIII. Summary

According to the arguments set forth above as to claim 13, Appellant respectfully asserts that the prior art of record in this case does not teach or reasonably suggest a construction material comprising a sheet of flexible material having a

longitudinal dimension and discontinuous slits in spaced-apart lines parallel to each other and transverse to the longitudinal dimension, and which is longitudinally expanded to form cells in the sheet including a hardened mixture of sand and tar, coated with sand particles, disposed in each of the cells. According to the argument set forth above as to claim 31, Appellant respectfully asserts that the prior art of record in this case does not teach or reasonably suggest a construction material comprising a sheet of flexible material having a thickness of about 0.028 to 1.0 mm and discontinuous slits, separated by gaps and each having a length, in parallel lines which are spaced apart about 1 to 4 mm; the length of each of the slits being about 1 to 2.5 cm, and the gaps each having a length of about 2 to 6 mm; the sheet expanded to form cells in the sheet; and a hardened mixture of sand and tar disposed in each of the cells.

Furthermore, because none of the applied references teach or suggest Appellant's claimed structure according to the arguments set forth above, and because the combination of Stock with Kinney is improper since there is no suggestion or motivation for the combination, Appellant believes that claims 13-16, and 31-35 are in condition for allowance. Accordingly, it is respectfully asserted that Appellant's claims are clearly

allowable and the case is now in condition for allowance. Appellant therefore prays for the reversal of the final rejection and the allowance of the subject application.

Pursuant to the foregoing, Appellant believes that the rejections of claims 13-16 and 31-35 are supported by a faulty analysis of the prior art and are quite incorrect, and that the rejections thereof and of the corresponding dependent claims are moot and should be withdrawn. Accordingly, any rejection not specifically addressed is not to be construed as an admission that the Examiner's position is correct or agreed upon, or that Appellant concedes the Examiner's position. Quite the contrary, each and every rejection set forth by the Examiner is believed to be based on an entirely incorrect analysis of the prior art as explained herein and are respectfully traversed.

Date: 19 December 2006

Respectfully submitted,

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CLAIMS APPENDIX A

13. A construction material comprising:

a sheet of flexible material having a longitudinal dimension and discontinuous slits in spaced-apart lines parallel to each other and transverse to the longitudinal dimension;

the sheet longitudinally expanded to form cells in the sheet; and

a hardened mixture of sand and tar, coated with sand particles, disposed in each of the cells.

14. The construction material of claim 13, wherein the sheet is fashioned of cardboard.

15. The construction material of claim 13, wherein the sheet is fashioned of plastic.

16. The construction material of claim 13, wherein the sheet is fashioned of metal foil.

31. A construction material comprising:

a sheet of flexible material having a thickness of about 0.028 to 1.0 mm and discontinuous slits, separated by gaps and each having a length, in parallel lines which are spaced apart about 1 to 4 mm;

the length of each of the slits being about 1 to 2.5 cm, and the gaps each having a length of about 2 to 6 mm;

the sheet expanded to form cells in the sheet; and

a hardened mixture of sand and tar disposed in each of the cells.

32. The construction material of claim 31, the hardened mixture in each of the cells coated with sand.

33. The construction material of claim 31, wherein the sheet is fashioned of cardboard.

34. The construction material of claim 31, wherein the sheet is fashioned of plastic.

35. The construction material of claim 31, wherein the sheet is fashioned of metal foil.

EVIDENCE APPENDIX B

There is no evidence submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132 or any other evidence entered and relied upon in this appeal.

RELATED PROCEEDINGS APPENDIX C

There are no copies of decisions rendered by a court or the Board in any proceeding because there are no other appeals, interferences, or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.